

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY TOKYO

C O N F I D E N T I A L STATE 096456

E.O. 11652: GDS

TAGS:PFOR, JA

SUBJECT: CASE ACT COMPLIANCE - JOINT COMMITTEE DOCUMENTS

REFS: (A) TOKYO 5512; (B) A-1394, MARCH 9, 1976

1. THE CASE ACT (1 U.S.C., SEC. 112B) PROVIDES AS FOLLOWS:

QUOTE THE SECRETARY OF STATE SHALL TRANSMIT TO THE CONGRESS THE TEXT OF ANY INTERNATIONAL AGREEMENT, OTHER THAN A TREATY, TO WHICH THE UNITED STATES IS A PARTY AS SOON AS PRACTICABLE AFTER SUCH AGREEMENT HAS ENTERED INTO FORCE WITH RESPECT TO THE UNITED STATES BUT IN NO EVENT LATER THAN SIXTY DAYS THEREAFTER. HOWEVER, ANY SUCH AGREEMENT THE IMMEDIATE PUBLIC DISCLOSURE OF WHICH WOULD, IN THE OPINION OF THE PRESIDENT, BE PREJUDICIAL TO THE NATIONAL SECURITY OF THE UNITED STATES SHALL NOT BE SO TRANSMITTED TO THE CONGRESS BUT SHALL BE TRANSMITTED TO THE COMMITTEE ON FOREIGN RELATIONS OF THE SENATE AND THE COMMITTEE ON FOREIGN AFFAIRS OF THE HOUSE OF REPRESENTATIVES UNDER AN APPROPRIATE INJUNCTION OF SECRECY TO BE CONFIDENTIAL

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REMOVED ONLY UPON DUE NOTICE FROM THE PRESIDENT UNQUOTE

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THE ACT SPECIFICALLY CONTEMPLATES THE TRANSMITTAL TO CONGRESS OF CONFIDENTIAL AGREEMENTS UNDER APPROPRIATE INJUNCTIONS OF SECRECY. A CONSIDERABLE NUMBER OF AGREEMENTS HAVE BEEN TRANSMITTED IN THIS MANNER.

2. IT IS NOT ALWAYS EASY TO DISTINGUISH EXACTLY WHICH AGREEMENTS REQUIRE TRANSMITTAL TO THE CONGRESS UNDER THE CASE ACT. REF B DISCUSSES IN SOME DETAIL THE VARIOUS CONSIDERATIONS WHICH GO INTO MAKING DECISIONS OF THIS SORT. THOSE AGREEMENTS WHICH ARE DETERMINED TO CONSTITUTE INTERNATIONAL AGREEMENTS WITHIN THE MEANING OF THE ACT WE ARE COMPELLED BY LAW TO TRANSMIT TO CONGRESS.

3. THE AIR TRAFFIC CONTROL AGREEMENT OF THE JOINT COMMITTEE WAS, IN ACCORDANCE WITH OUR GENERALLY APPLIED CRITERIA, DETERMINED TO BE SUCH AN AGREEMENT. IT WAS TRANSMITTED TO CONGRESS WITH A QUOTE APPROPRIATE INJUNCTION OF SECRECY UNQUOTE AS PROVIDED IN THE STATUTE. IT IS NOT, THEREFORE, CORRECT TO CHARACTERIZE THIS TRANSMITTAL AS QUOTE PUBLICATION BY CONGRESS UNQUOTE (REF A). THERE IS, MOREOVER, NO INDICATION THAT THE TEXT OR SUBSTANCE OF THIS AGREEMENT HAS BEEN IN ANY WAY RELEASED BY THE APPROPRIATE CONGRESSIONAL COMMITTEES.

4. THE JAPANESE EMBASSY HERE WAS INFORMED IN GREAT DETAIL OF THE REQUIREMENTS OF THE CASE ACT AND OF THE MANNER IN WHICH CONFIDENTIAL AGREEMENTS ARE HANDLED. A COPY OF REF B WAS PROVIDED TO THE EMBASSY IN WAY OF ASSISTANCE. FURTHER, THE FACT THAT THE AIR TRAFFIC CONTROL AGREEMENT HAD BEEN TRANSMITTED AS A CONFIDENTIAL AGREEMENT AND HAD IN NO WAY BEEN PUBLICLY RELEASED, WAS SPECIFICALLY CONVEYED.

5. WE BELIEVE THAT WE ARE REQUIRED BY OUR DOMESTIC LAW TO HANDLE AGREEMENTS OF THIS SORT IN THIS MANNER. WE DO NOT BELIEVE, HOWEVER, THAT THIS IN ANY WAY TRANSGRESSES OUR AGREEMENT WITH THE GOJ THAT ALL DOCUMENTS AND AGREEMENTS ARE CONFIDENTIAL

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MENTS RESULTING FROM JOINT COMMITTEE PROCEEDINGS WOULD BE HANDLED AS CONFIDENTIAL AND NOT PUBLICLY RELEASED WITHOUT PRIOR MUTUAL AGREEMENT. THE CONFIDENTIAL TRANSMITTAL TO SPECIFIC COMMITTEES OF CONGRESS AS PROVIDED IN THE CASE ACT DOES NOT CONSTITUTE SUCH A PUBLIC RELEASE. IT SIMPLY REFLECTS, RATHER, THE REQUIREMENT IN OUR SEPARATION OF POWERS CONSTITUTIONAL SYSTEM THAT THE LEGISLATURE SHARE IN CERTAIN INFORMATION OF THE EXECUTIVE.

6. WE DO NOT BELIEVE, THEREFORE, THAT THE PROVISIONS
OF THE CASE ACT CONFLICT IN ANY WAY WITH OUR OBLIGATIONS
TO THE GOJ OR OTHERWISE INTERFERE WITH OUR ABILITY TO
MAINTAIN THE CONFIDENTIALITY OF JOINT COMMITTEE OR OTHER
SECURITY CONSULTATIONS AND AGREEMENTS. PLEASE EXPLAIN
TO THE GOJ THE ABOVE PROVISIONS OF THE CASE ACT AND LET
US KNOW IF IT HAS FURTHER QUESTIONS OR CONCERNS. KISSINGER

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